

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

V.

DANIEL S. MCNETT.

Defendant.

CASE NO. CR11-5508 BHS

**ORDER DENYING MOTION
FOR REVIEW OF SENTENCE**

This matter comes before the Court on Defendant Daniel S. McNett’s (“McNett”) motion for review of sentence (Dkt. 70). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby denies the motion for the reasons stated herein.

I. PROCEDURAL & FACTUAL BACKGROUND

On October 18, 2011, a federal grand jury sitting in this district returned an Indictment charging Defendant Daniel McNett with Theft of Firearms from a Federal Firearms Licensee, in violation of Title 18, United States Code, Section 922(u):

1 Possession and Sale of Stolen Firearms, in violation of Title 18, United States Code,
2 Sections 922(j), 924(a)(2) and 2; and Felon in Possession of a Firearm, in violation of
3 Title 18, United States Code, Sections 922(g)(1) and 924(a)(2).

4 On April 10, 2012, Defendant pled guilty to Counts One (Theft of Firearms from a
5 Federal Firearms Licensee) and Two (Possession and Sale of Stolen Firearms) of the
6 Indictment. In the plea agreement, the parties agreed to jointly recommend a sentence of
7 no less than 96 months and no more than 120 months. *See* Dkt. 49 (Plea Agreement). The
8 plea agreement also contained a waiver of Defendant's right to appeal the sentence. *Id.*

9 On July 23, 2012, this Court sentenced Defendant to a term of imprisonment of 96
10 months. Dkt. 67. After sentencing, Defendant did not file a notice of appeal (as indicated
11 above, he waived his appeal rights as part of his plea agreement). Nor did he file a motion
12 to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. §2255 within the one-
13 year time frame set out in that statute.

14 On March 6, 2014, McNett filed the instant motion for review of his sentence
15 pursuant to 18 U.S.C. § 3742. Dkt. 70. On March 14, 2014, the Government filed a
16 response in opposition to McNett's motion. Dkt. 71.

17 **II. DISCUSSION**

18 Contrary to McNett's assertion, the Court does not have jurisdiction pursuant to 18
19 U.S.C. 3742 to reconsider his sentence. Nor is there any other jurisdictional basis for the
20 Court do so. Even if the Court had jurisdiction, for all the reasons set forth in the
21 Government's response, the Court concludes that there was no error in McNett's
22 sentence. Dkt. 71 at 3-4.

III. ORDER

2 Therefore, it is hereby **ORDERED** that McNett's motion for review of his
3 sentence (Dkt. 70) is **DENIED**.

Dated this 28th day of March, 2014.


BENJAMIN H. SETTLE
United States District Judge